

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

FEDERAL TRADE COMMISSION,
STATE OF ARIZONA,
STATE OF CALIFORNIA,
DISTRICT OF COLUMBIA,
STATE OF ILLINOIS,
STATE OF MARYLAND,
STATE OF NEVADA,
STATE OF NEW MEXICO,
STATE OF OREGON, and
STATE OF WYOMING,

Plaintiffs,

v.

THE KROGER COMPANY and
ALBERTSONS COMPANIES, INC.,

Defendants.

Case No.: 3:24-cv-00347-AN

**STIPULATION AND ORDER
REGARDING THE SCOPE OF THE
RECORD**

WHEREAS Plaintiffs Federal Trade Commission and the States of Arizona, California, Illinois, Maryland, Nevada, New Mexico, Oregon, and Wyoming and the District of Columbia, by and through their respective attorneys general (“Plaintiffs”) and Defendants The Kroger Co. and Albertsons Companies, Inc. (“Defendants”) have agreed to the terms of this Stipulation and Order Regarding the Scope of the Record (“Stipulation”). Plaintiffs and Defendants (together, the “Parties and each a “Party”) agree that this Stipulation shall apply to the admissibility of documents following the conclusion of the evidentiary hearing on Plaintiffs’ motion for preliminary injunction

(“Evidentiary Hearing”) and resolves the Parties’ dispute regarding the admissibility of the scope of the administrative record in this proceeding. (ECF Nos. 274, 276.)

WHEREAS the Parties therefore are entering into this Stipulation with the request that the Court enter it as an Order.

NOW THEREFORE, it is hereby STIPULATED and ORDERED:

Following the conclusion of the Evidentiary Hearing, each Party may seek to offer into evidence a reasonable number of exhibits in support of that Party’s proposed findings of fact (“Post-Hearing Exhibits”). The Parties shall retain all rights to object to the admission of any Post-Hearing Exhibits, which shall be resolved by the following process:

1. A Party intending to seek to offer into evidence any Post-Hearing Exhibits must disclose them to the opposing Party no later than three calendar days before the deadline to file their respective proposed findings of fact, which under the Case Management and Scheduling Order is ten days after the Evidentiary Hearing concludes. (ECF No. 88 at 19.)

2. The Parties shall meet and confer to attempt to resolve any objections to Post-Hearing Exhibits before filing their proposed findings of fact.

3. On the same date the Parties file proposed findings of fact, they shall also file:

i. A joint list of the Post-Hearing Exhibits they agree are admissible.

ii. A joint list of the Post-Hearing Exhibits they seek to offer in support of their proposed findings of fact, but to which at least one Party maintains an objection.

This list shall identify the Party seeking to offer the exhibit and the Party maintaining the objection, and contain a brief explanation of the basis for the objection.

iii. Separate briefs, not to exceed five pages each for Plaintiffs and Defendants, with any arguments related to the remaining objections.

Dated: August 26, 2024

Respectfully submitted,

/s/ Susan A. Musser

Susan A. Musser, DC Bar # 1531486

Rohan Pai, DC Bar # 1015652

Charles Dickinson, DC Bar # 997153

Laura Hall, NY Bar # 4337408

Barrett Anderson, CA Bar # 318539

Federal Trade Commission

Bureau of Competition

600 Pennsylvania Avenue, NW

Washington, DC 20580

Telephone: (202) 326-2122

smusser@ftc.gov

Attorneys for Plaintiff Federal Trade Commission

/s/ Robert A. Bernheim

Robert A. Bernheim, AZ Bar No. 024664

Jayme L. Weber, AZ Bar No. 032608

Vinny Venkat, AZ Bar No. 038587

Connor Nolan, AZ Bar No. 038088

Arizona Office of the Attorney General

2005 N. Central Avenue

Phoenix, AZ 85004

Telephone: (602) 542-5025

Robert.Bernheim@azag.gov

Jayme.Weber@azag.gov

Vinny.Venkat@azag.gov

Connor.Nolan@azag.gov

Attorneys for Plaintiff State of Arizona

/s/ Nicole Gordon

Nicole Gordon, CA Bar No. 224138

Shira Hoffman, CA Bar No. 337659

State of California

California Department of Justice

455 Golden Gate Ave., Suite 11000

San Francisco, CA 94102

Telephone: (415) 510-3458

Facsimile: (415) 703-5480

Nicole.Gordon@doj.ca.gov

Shira.Hoffman@doj.ca.gov

Attorneys for Plaintiff State of California

/s/ C. William Margrabe

C. William Margrabe, DC Bar No. 90013916

Office of the Attorney General for the District of
Columbia

400 6th Street, N.W, 10th Floor

Washington, D.C. 20001

Telephone: (202) 727-3400

Will.Margrabe@dc.gov

Attorneys for Plaintiff District of Columbia

/s/ Brian M. Yost

Brian M. Yost, IL Bar No. 6334138

Paul J. Harper, IL Bar No. 6335001

Alice Riechers, IL Bar No. 6272933

Office of the Illinois Attorney General

115 S. LaSalle St.

Chicago, IL 60603

Telephone: (872) 276-3598

Email: Brian.Yost@ilag.gov

Paul.Harper@ilag.gov

Alice.Riechers@ilag.gov

Attorneys for Plaintiff State of Illinois

/s/ Schonette J. Walker

Schonette J. Walker, MD Bar No. 0512290008

Gary Honick, MD Bar No. 7806010078

Byron Warren, MD Bar No. 1612140330

Office of the Attorney General

200 St. Paul Place, 19th Floor

Baltimore, MD 21202

Telephone: (410) 576-6470

swalker@oag.state.md.us

ghonick@oag.state.md.us

bwarren@oag.state.md.us

Attorneys for Plaintiff State of Maryland

/s/ Lucas J. Tucker

Lucas J. Tucker, NV Bar No. 10252

Samantha B. Feeley, NV Bar No. 14034

Office of the Nevada Attorney General

100 N. Carson St.

Carson City, Nevada 89701

Telephone: (775) 684-1100

ltucker@ag.nv.gov

sfeeley@ag.nv.gov

Attorneys for Plaintiff State of Nevada

/s/ Julie Ann Meade

Julie Ann Meade, NM Bar No. 8143

Jeff Dan Herrera, NM Bar No. 154030

New Mexico Department of Justice

408 Galisteo St.

Santa Fe, NM 87504

Telephone: (505) 717-3500

jmeade@nmag.gov

jherrera@nmag.gov

Attorneys for Plaintiff State of New Mexico

/s/ Cheryl F. Hiemstra

Cheryl F. Hiemstra, OSB#133857

Tim D. Nord, OSB#882800

Chris Kayser, OSB#984244

Tania Manners, OSB#140363

Oregon Department of Justice

100 SW Market Street

Portland, OR 97201

Telephone: (503) 934-4400

Facsimile: (503) 378-5017

Cheryl.Hiemstra@doj.state.or.us

Tim.D.Nord@doj.state.or.us

cjkayser@lvklaw.com

tmanners@lvklaw.com

Attorneys for Plaintiff State of Oregon

/s/ William Young

William Young, WY Bar No. 8-6746

Office of the Wyoming Attorney General

109 State Capitol

Cheyenne, WY 82002

Telephone: (307) 777-7847

William.Young@wyo.gov

Attorney for Plaintiff State of Wyoming

STOEL RIVES LLP

/s/ B. John Casey

B. JOHN CASEY, OSB No. 120025

john.casey@stoel.com

RACHEL C. LEE, OSB No. 102944

rachel.lee@stoel.com

JACOB GOLDBERG, OSB No. 162565

jacob.goldberg@stoel.com

AND

ARNOLD & PORTER KAYE SCHOLER LLP

MATTHEW M. WOLF (*Pro Hac Vice*)

matthew.wolf@arnoldporter.com

SONIA K. PFAFFENROTH (*Pro Hac Vice*)

sonia.pfaffenroth@arnoldporter.com

JOSHUA M. DAVIS (*Pro Hac Vice*)

joshua.davis@arnoldporter.com

KOLYA D. GLICK (*Pro Hac Vice*)

kolya.glick@arnoldporter.com

JASON C. EWART (*Pro Hac Vice*)

jason.ewart@arnoldporter.com

MICHAEL E. KIENTZLE (*Pro Hac Vice*)

michael.kientzle@arnoldporter.com

MATTHEW M. SHULTZ (*Pro Hac Vice*)

matthew.shultz@arnoldporter.com

DAVID B. BERGMAN (*Pro Hac Vice*)

david.bergman@arnoldporter.com

MICHAEL L. WALDEN (*Pro Hac Vice*)

mike.walden@arnoldporter.com

YASMINE L. HARIK (*Pro Hac Vice*)

yasmine.harik@arnoldporter.com

ALLISON GARDNER (*Pro Hac Vice*)

allison.gardner@arnoldporter.com

BARBARA H. WOOTTON (*Pro Hac Vice*)

barbara.wootton@arnoldporter.com

CHRISTIAN SCHULTZ (*Pro Hac Vice*)

christian.schultz@arnoldporter.com

DAVID EMANUELSON (*Pro Hac Vice*)

david.emanuelson@arnoldporter.com

MEI-WAH LEE (*Pro Hac Vice*)

mei-wah.lee@arnoldporter.com

WILSON DELOSS MUDGE (*Pro Hac Vice*)
wilson.mudge@arnoldporter.com
601 Massachusetts Avenue, NW
Washington, DC 20001
Telephone: 202.942.5000

JOHN A. HOLLER (*Pro Hac Vice*)
john.holler@arnoldporter.com
250 W 55th Street
New York, NY 10019
Telephone: 212.836.8000

BRIAN K. CONDON (*Pro Hac Vice*)
brian.condon@arnoldporter.com
777 S. Figueroa Street, 44th Floor
Los Angeles, CA 90017
Telephone: 213.243.4000

JEREMY T. KAMRAS (*Pro Hac Vice*)
jeremy.kamras@arnoldporter.com
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111
Telephone: 415.471.3100

AND

WEIL, GOTSHAL & MANGES LLP

MARK A. PERRY (*Pro Hac Vice*)
mark.perry@weil.com
LUKE SULLIVAN (*Pro Hac Vice*)
luke.sullivan@weil.com
JASON N. KLEINWAKS (*Pro Hac Vice*)
jason.kleinwaks@weil.com
2001 M Street, NW, Suite 600
Washington, DC 20036
Telephone: 202.682.7000

LUNA N. BARRINGTON (*Pro Hac Vice*)
luna.barrington@weil.com
767 Fifth Avenue
New York, NY 10153
Telephone: 212.310.8000

SARAH M. STERNLIEB (*Pro Hac Vice*)

sarah.sternlieb@weil.com
700 Louisiana Street, Suite 3700
Houston, TX 77002
Telephone: 713.546.5000

BAMBO OBARO (*Pro Hac Vice*)
bambo.obaro@weil.com
201 Redwood Shores Parkway
Redwood Shores, CA 94065
Telephone: 650.802.3000

THOMAS B. FIASCONE (*Pro Hac Vice*)
tom.fiascone@weil.com
REBECCA SIVITZ (*Pro Hac Vice*)
rebecca.sivitz@weil.com
100 Federal Street, Floor 34
Boston, MA 02110
Telephone: 617.722.8314

Attorneys for Defendant The Kroger Company

ANGELI LAW GROUP LLC

/s/ David H. Angeli
DAVID H. ANGELI, Bar No. 020244
david@angelilaw.com
PETER D. HAWKES, Bar No. 071986
peter@angelilaw.com
121 SW Morrison Street, Suite 400
Portland, OR 97204
Telephone: 503.954.2232

AND

DEBEVOISE & PLIMPTON LLP

EDWARD D. HASSI (*Pro Hac Vice*)
thassi@debevoise.com
801 Pennsylvania Avenue NW
Washington, DC 20004
Telephone: 202.942.5000

MICHAEL SCHAPER (*Pro Hac Vice*)
mschaper@debevoise.com

SHANNON ROSE SELDEN (*Pro Hac Vice*)
srselden@debevoise.com
J. ROBERT ABRAHAM (*Pro Hac Vice*)
jrabraham@debevoise.com
NATASCHA BORN (*Pro Hac Vice*)
nborn@debevoise.com
66 Hudson Boulevard
New York, NY 10001
Telephone: 212.909.6000

AND

WILLIAMS & CONNOLLY LLP

ENU A. MAINIGI (*Pro Hac Vice*)
emainigi@wc.com
JONATHAN B. PITT (*Pro Hac Vice*)
jpitt@wc.com
A. JOSHUA PODOLL (*Pro Hac Vice*)
apodoll@wc.com
THOMAS W. RYAN (*Pro Hac Vice*)
tryan@wc.com
TYLER INFINGER (*Pro Hac Vice*)
tinfinger@wc.com
WILLIAM ASHWORTH (*Pro Hac Vice*)
washworth@wc.com
680 Maine Avenue SW
Washington, DC 20024
Telephone: 202.434.5000

AND

DECHERT LLP

JAMES A. FISHKIN (*Pro Hac Vice*)
james.fishkin@dechert.com
MICHAEL COWIE (*Pro Hac Vice*)
mike.cowie@dechert.com
ELENA KAMENIR (*Pro Hac Vice*)
elena.kamenir@dechert.com
1900 K Street NW
Washington, DC 20006
Telephone: 202.261.3300

HOWARD. M. ULLMAN (*Pro Hac Vice*)

howard.ullman@dechert.com
45 Fremont St, 26th Floor
San Francisco, CA 94105
Telephone: 415.262.4500

ROSS UFBERG (*Pro Hac Vice*)
ross.ufberg@dechert.com
YOSEF WEITZMAN (*Pro Hac Vice*)
yosi.weitzman@dechert.com
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
Telephone: 215.994.2422

Attorneys for Defendant Albertsons Companies, Inc.

IT IS SO ORDERED:

August 28, 2024


UNITED STATES DISTRICT JUDGE